



# U.S. DEPARTMENT of STATE

## Swaziland

### Country Reports on Human Rights Practices - [2003](#)

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Swaziland is a modified traditional monarchy with executive, legislative, and limited judicial powers ultimately vested in the King (Mswati III). The King ruled according to unwritten law and custom, in conjunction with a partially elected parliament and an accompanying structure of published laws and implementing agencies. The 2001 municipal elections and parliamentary elections during the year increased representative government; however, political power continued to rest largely with the King and his circle of traditional advisors, including the Queen Mother. The judiciary was generally independent; however, the King exerted certain judicial powers, and High Court judges struggled to resist pressure to yield any powers to those outside the judiciary.

Both the Umbutfo Swaziland Defense Force and the Royal Swaziland Police operate under civilian control and are responsible for external and internal security. Some communities questioned the ability of the National Police to operate effectively at the community level and have formed community police. Members of both the National Police and the community police committed human rights abuses.

The country had a free market economy, with relatively little government intervention; its population was approximately 1.1 million. The majority of citizens were engaged in subsistence agriculture and the informal marketing of agricultural goods, although a relatively diversified industrial sector accounted for the largest component of the formal economy. The country depended heavily on South Africa, from which it received almost all of its imports and to which it sent the majority of its exports. A quasi-parastatal organization established by royal charter, and responsible to the King, maintained large investments in major sectors of the economy, including industry, agriculture, and services, and required partnership with foreign investors and international development agencies.

The Government's human rights record was poor, and it continued to commit serious abuses. Citizens were not able to change their government peacefully. Police used excessive force on some occasions, and there were reports that police tortured and beat some suspects. Impunity was a problem. The Government infringed on citizen's privacy rights. The Government continued to limit freedom of speech and of the press. The Government restricted freedom of assembly and association and prohibited political activity, although numerous political groupings operated openly and voiced opinions critical of the Government. The police on several occasions harassed political activists. There were some limits on freedom of movement. Legal and cultural discrimination, violence against women, and abuse of children remained problems. Some societal discrimination against mixed race and white citizens persisted. Worker rights remained limited. Trafficking in persons occurred.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Arbitrary or Unlawful Deprivation of Life

There were no reports of the arbitrary or unlawful deprivation of life by the Government or its agents.

There were no developments in the 2001 police killing of a 20-year-old man, or the 2001 death by poisoning in police custody of two 20-year-olds.

#### b. Disappearance

There were no reports of politically motivated disappearances.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law does not specifically prohibit such practices, although under the Prison's Act correctional facility officers may be prosecuted if they engage in such practices; however, there were reports that government officials employed them. There were credible reports by criminal defendants that the security forces used torture during interrogation and abused their authority by assaulting citizens and using excessive force in carrying out their duties. For example, in August, police reportedly beat a member of the Swaziland Federation of Trade Unions (SFTU) following his arrest during a legal protest action.

Police sometimes beat criminal suspects and occasionally used the "tube" style of interrogation, in which police suffocate suspects through the use of a rubber tube around the face and mouth. According to unofficial reports, police still used the Kentucky method of interrogation in which the arms and legs of suspects are bent and tied together with rope or chain, then the person is beaten.

There was no action taken against members of the security forces responsible for the 2002 beating of a woman accused of theft.

Police also banned and forcibly dispersed demonstrations (see Section 2.b.).

Prison conditions generally met international standards; however, there were reports that torture, lack of basic hygiene, and unsafe sexual practices were spreading HIV/AIDS among the prisoners. Government detention centers remained overcrowded, and conditions were generally poor. The use of non-bailable provisions resulted in the continued overcrowding and other unfavorable conditions in government detention centers where suspects were held during pretrial detention (see Section 1.d.).

Women were held in separate prison facilities; however, at times children (age 3 and under) of female inmates lived with their mothers in the women's prison. A November press report alleged that male guards forced female prisoners into sex.

The Government routinely permitted prison visits by diplomats, journalists, human rights monitors, and representatives of international organizations. During the year, the local Red Cross visited several prisons.

#### d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention, and the Government generally respected these prohibitions.

The police force is generally professional and uncorrupt; it suffered from a lack of resources, material and human, as well as bureaucratic inefficiency. There were credible allegations that the force was susceptible to political pressure. The Government generally failed to prosecute or otherwise discipline police officers for abuses. An internal complaints and discipline unit investigated reports of human rights abuses by the police, but no independent body had the authority to investigate police abuses. Courts have invalidated confessions induced through physical abuse and have ruled in favor of citizens assaulted by police.

The law requires warrants for arrests, except when police observed a crime being committed or believed that a suspect might flee. Detainees may consult with a lawyer of their choice and must be charged with the violation of a statute within a reasonable time, usually 48 hours, or, in remote areas, as soon as the judicial officer appeared.

The Government continued to limit the provisions for bail for crimes appearing in the Non-Bailable Offenses Order, which listed 11 offenses. The Minister of Justice may amend the list by his own executive act. The mere charge of the underlying offense, without any evidentiary showing that the suspect was involved, was sufficient to employ the non-bailable provision. The non-bailable offense provision exacerbated ongoing judicial problems such as lengthy pretrial detention, the backlog of pending cases, and prison overcrowding. Following a November 2002 Court of Appeals ruling invalidating the Non-Bailable Offenses Order, the courts began granting bail. Despite these court decisions, police continued to detain suspects even though they had paid bail. There reportedly were 124 cases of unlawful detention pending against the Government at year's end. Suspects often were released for time served after being sentenced.

There were no developments in the detention of a young woman and the grandfather of evicted Chief Mtfuso during the 2002 forced eviction of residents in the kaMkhweli and Macetjeni areas.

The law prohibits forced exile, and the Government did not use it.

#### e. Denial of Fair Public Trial

The law provides for an independent judiciary; however, the King has certain judicial powers, and government officials, including the King, the Prime Minister, the Minister of Justice and Constitutional Affairs, and the traditional governor of the royal family, challenged the judiciary's independence by attempting to influence and also to reverse court decisions. High Court judges resisted pressure to yield any powers to those outside the judiciary; however, the Government ignored judgments that did not favor them. For example, the Government refused to release from detention, suspects who had paid their bail, and it also refused to comply with a court order to permit unions to conduct a strike during the August international conference for Commonwealth nations (the SMART Partnership Conference), which was aimed at promoting social dialogue as a means of

solving national problems.

In November 2002, the Director of Public Prosecutions (DPP) brought obstruction of justice and sedition charges against the Attorney General (AG) based on his attempted coercion of the High Court judges. The Government blocked the DPP's efforts to prosecute the AG by refusing to serve process in the case, and the DPP was forced to resign in January. The Government has also charged the DPP with obstruction of justice in connection with his involvement in a car accident several years ago. The case was pending at year's end.

In November 2002, the Prime Minister ordered the Clerk of Parliament transferred to the Ministry of Agriculture, stripped him of his administrative powers, and transferred those powers to the Principal Secretary in the Prime Minister's office. The Clerk challenged his transfer and requested the intervention of the Labor Commissioner. The case still was pending at year's end.

In November 2002, the Court of Appeals ruled that King Mswati had no authority to rule by decree until a new constitution was put in place, which invalidated the Non-Bailable Offenses Order (see Section 1.d.). Also in November 2002, the Government declared that it would disregard the court's ruling because it challenged the "legitimate authority of the King." As a result of this statement, every judge on the Court of Appeals resigned. During the year, the Government unsuccessfully tried to recruit replacement judges to staff the Court of Appeals.

Judicial powers are vested in a dual system, one independent and based on Western law, the other based on a system of national courts that followed unwritten traditional law and custom. In treason and sedition cases, the King can circumvent the regular judiciary by appointing a special tribunal, which may adopt rules and procedures different from those applied in the High Court; however, this power has not been used since 1987.

The Western judiciary consisted of the Court of Appeals (composed entirely of expatriate, usually South African, judges), the High Court, and magistrate courts, all of which were independent of executive and military control. The expatriate judges, frequently distinguished members of their respective bars, served on 2-year renewable contracts. Local judges served indefinitely with good behavior. In magistrate courts, defendants were entitled to counsel at their own expense. Court-appointed counsel was provided in capital cases or when difficult points of law were at issue. There were well-defined appeal procedures up to the Court of Appeals, the highest judicial body. A lack of an independent court budget, lack of trained manpower, inadequate levels of salary remuneration, and poor casework management remained problems for the judiciary.

Most citizens who encountered the legal system did so through the traditional courts. The authorities may bring ethnic Swazi citizens to these courts for minor offenses and violations of traditional law and custom. In traditional courts, defendants were not permitted formal legal counsel but could speak on their own behalf and were assisted by informal advisers. Sentences were subject to review by traditional authorities and could be appealed to the High Court and the Court of Appeals. The public prosecutor legally has the authority to determine which court should hear a case, but in practice the police usually made the determination. Accused persons had the right to transfer their cases from the traditional courts. Prolonged delays in trials were common.

An administrative order from the King strengthened the judicial powers of traditional chiefs appointed by him. The order provided for chiefs' courts with limited civil and criminal jurisdiction and authorized the imposition of fines up to approximately \$44 (300 emalangenis), and prison sentences of up to 3 months. Accused persons were required to appear in person without representation by a legal practitioner or advocate. However, chiefs' courts only were empowered to administer customary law "insofar as it is not repugnant to natural justice or morality," or inconsistent with the provisions of any law in force. The order provides that defendants may appeal decisions of the chiefs' courts to regional appeal courts and to the higher courts of appeal. Appeals in criminal matters can be taken to the Judicial Commissioner as a last resort, and the High Court was the court of last resort for civil matters.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law requires a warrant from a magistrate before police may search homes or other premises; however, at times police did not respect this requirement in practice. Police officers with the rank of Sub-Inspector or higher had the right to conduct a search without a warrant if they believed that evidence might be lost through the delay in obtaining a warrant. Searches without warrants occurred (see Section 2.a.). For example, on November 30, police stopped and searched the cars and luggage of ten members of the People's United Democratic Movement (PUDEMO) as they traveled from the border with South Africa to Mbabane.

There were instances of physical surveillance by the police on members of labor unions and banned political groups. For example, during the August SMART Partnership International Conference, police closely monitored SFTU Secretary General Jan Sithole and Swaziland Federation of Labor (SFL) Secretary General Vincent Ncongwane. Police also used video cameras to record meetings of union members.

Section 2 Respect for Civil Liberties, Including:

#### a. Freedom of Speech and the Press

The law does not provide for freedom of speech or of the press, and the Government limited these rights through a formal ban on political parties and occasional harassment of journalists. The Government also discouraged critical news coverage of the royal family, and journalists practiced self-censorship in regard to the immediate royal family and national security policy.

There was one daily independent newspaper and one daily newspaper owned by Tibiyo Taka Ngwane, the King's investment company. In general, both newspapers covered a wide variety of sensitive topics and criticized government corruption, inefficiency, and waste, frequently using harsh language; however, the Government used the same media to rebut such allegations. With some exceptions, the Government continued to withhold its advertising from the independently owned daily newspaper. The Prime Minister's office distributed a free weekly circular reporting on government policy and activities.

The Government generally had a monopoly over television and radio programming. There were two government-owned radio stations. There was one independent radio station, which only broadcast religious programs. There is a privately owned television station, which is officially independent; however, the owner's mother is the daughter of the former king, Sobhuza, and its reporting favored the status quo. The government-owned television and radio stations, the most influential media in reaching the public, generally followed official policy positions. Government broadcast facilities retransmitted Voice of America and British Broadcasting Corporation news programs in their entirety.

Private companies and church groups owned several newsletters, magazines, and a radio station that broadcast throughout the region but generally avoided political controversy. The Christian Broadcasting Company radio station was allowed to operate despite the government policy not to permit private broadcasters to operate.

In April, the Minister of Public Information advised media representatives not to write anything controversial about the Government; however, the Minister took no action to enforce this advice.

Unlike in the previous year, police did not beat journalists.

In September, the Government reportedly threatened to confiscate issues of a South African paper, The Sunday Times, after it published a story and photographs detailing King Mswati III's fifth wife's, LaMagwaza's, involvement with an ethnic Swazi man living in South Africa. The Government bought almost the entire distribution of the paper in the country on the day the story was published.

In 2002, police entered the only privately owned radio station and confiscated a video of a sermon in which a pastor, Justice Dlamini, severely criticized certain cultural practices, including the Reed Dance and Incwala ceremony.

The Government did not restrict access to the Internet.

The Government restricted academic freedom. The practice of self-censorship and the prohibition on political gatherings limited academic freedom.

#### b. Freedom of Peaceful Assembly and Association

The law does not provide for freedoms of assembly and association, and the Government restricted these rights in practice. A decree prohibits meetings of a political nature, processions, or demonstrations in any public place without the consent of the Commissioner of Police. The authorities routinely withheld permission to hold such meetings.

During the year, the police forcibly dispersed several demonstrations and meetings. For example, on April 5, police used tear gas to forcibly disperse a small group of protestors demonstrating against one of King Mswati III's brothers, Prince Maguga, who had ordered residents from their land in Macetjeni and kaMkhweli in 2002.

During the year, police harassed, arrested, and disrupted the meetings of prodemocracy activists and members of banned political parties. For example, on April 12, police prevented 30 members from the banned political party PUDEMO from holding a political rally in the border town of Lavumisa. On May 28, the Operational Support Service Unit of the police used tear gas to prevent PUDEMO and their youth group, the Swaziland Youth Congress, from demonstrating in Mbabane. On September 23, police prevented another planned PUDEMO demonstration in honor of the group's 20th anniversary.

Police also banned and dispersed meetings held by workers' unions. Police generally took such actions when they believed that political discussions were occurring, or were likely to occur, at these meetings. On August 13, police forcibly dispersed a protest action authorized under the Industrial Relations Act (IRA) by using tear gas, rubber bullets, and an anti-riot vehicle with a water cannon, injuring several persons. On August 14, despite having a court order authorizing a demonstration, police detained SFTU Secretary General Jan Sithole and several SFTU members in Matsapha to prevent them from demonstrating. Another SFTU demonstrator, Roland Rudd, who was charged with possession of gasoline bombs, alleged that police beat him.

There was no action taken against police officers responsible for forcibly dispersing demonstrations in 2002 or 2001.

Former King Sobhuza's 1973 decree prohibits political parties.

#### c. Freedom of Religion

There is no formal legal provision for freedom of religion; however, the Government generally respected freedom of religion in practice, although authorities on occasion disrupted or cancelled prayer meetings that were considered to have political implications.

New religious groups or churches were expected to register with the Government upon organizing in the country. There is no law describing the organizational requirements of a religious group or church. All religions were recognized unofficially. Groups were registered routinely, and there were no reports of any groups being denied registration during the year.

On June 10, a teacher was fired and three primary school children were expelled from the Manyandeni Primary School in Hluthi in Shiselweni because they were members of the Jehovah's Witnesses.

Government permission was required for the construction of new religious buildings. Non-Christian groups sometimes experienced minor delays in obtaining permits from the Government.

For a more detailed discussion, see the [2003 International Religious Freedom Report](#).

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law does not provide for these rights, and the Government placed some limits on them in practice. Citizens may travel and work freely within the country; however, under traditional law, a married woman requires her husband's permission to apply for a passport, and an unmarried woman requires the permission of a close male relative. Citizenship law nominally permits nonethnic Swazis to obtain passports and citizenship documents; however, individuals seeking these documents sometimes experienced lengthy processing delays, in part due to the prejudice that mixed-race and white persons were not real citizens (see Section 5). Political dissenters often had their citizenship questioned and could experience difficulty in obtaining travel documents. The Constitutional Review Commission made a recommendation that effectively could render a child stateless should it be born to a citizen mother and a foreign father; however, it was not included in the final draft of the Constitution.

The Government treated several thousand ethnic Swazis living across the border in South Africa, who were not citizens of the country, as virtually indistinguishable from Swazi citizens and routinely granted them travel and citizenship documents.

The law provides for the granting of refugee status and asylum to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement. The Government cooperated fully with the office of the U.N. High Commissioner for Refugees (UNHCR), as well as the various nongovernmental organizations (NGOs) involved in the care of refugees. According to the UNHCR, there were an estimated 1,000 refugees in the country, the majority coming from central Africa and from Angola.

#### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens were not able to change their government peacefully. The King retained ultimate executive and legislative authority, and political parties were prohibited. Passage of legislation by Parliament required the King's assent to become law, which he was not obliged to give. When Parliament was not in session, the King could legislate by decree under his residual emergency powers. The King chooses the Prime Minister and, in consultation with the Prime Minister, also chooses the Cabinet, many senior civil servants, and the heads of government offices.

Citizens elected most members of the lower house of Parliament. According to law, 55 seats in the 65-seat House of Assembly are popularly contested, and the King appoints the remaining 10 seats. On October 18, parliamentary elections by secret ballot took place. International observers monitored the elections. Commonwealth observers concluded that the elections were not free and fair because the Parliament has no real authority. Since many former members of Parliament were not reelected, voters apparently felt free to express their dissatisfaction with these former members' performance. Observers also recommended that the Government permit voter registration on an ongoing basis to improve the rate of registration. The continuing ban on political parties and restrictions on political activity prompted some political groups to call for a boycott of the elections by their members. Election officials reported that approximately 228,000 of the 400,000 eligible citizens registered for the parliamentary elections, and that approximately 40,000 citizens voted, although critics questioned that figure. Election procedures generally were carried out in an orderly fashion; however, police arrested several persons for using forged voter registration certificates and for trying to vote more than once. Alleged irregularities led to legal challenges in three constituencies. PUDEMO boycotted the elections; however, members of other organized but banned political groups participated in the elections and three opposition members were elected to Parliament. As required by law, the elected members of the House of Assembly nominated 10 members from the public to serve in the Senate (upper house). The King appointed an additional 20 Senate members.

In May, the Constitutional Drafting Committee released a draft Constitution, and the Government commenced a civic education program in each administrative center (Tinkhundla) to allow citizens to comment on the draft. Discussions on the content of the draft were ongoing at year's end.

Several traditional forums existed for the expression of opinion, including community meetings, national councils, and direct dialogue with area chiefs; however, these local channels were not meant as a vehicle for political change. They often depended on the interests of leaders and were not consistently effective channels for expressing political dissent.

Chiefs were custodians of traditional law and custom and were responsible for the day-to-day running of their chiefdom. Although law and customs were not codified, chiefs essentially were responsible for maintaining law and order in their respective chiefdoms. For example, chiefs had their own community police who could arrest a suspect and bring the suspect before an inner council within the chiefdom for a trial. In addition to the law, chiefs traditionally were empowered by virtue of unwritten customary laws to impose fines and some form of punishment on their subjects. Chiefs were an integral part of society and acted as overseers or guardians of families within the communities and traditionally reported directly to the King. Local custom mandates that chieftaincy is hereditary.

Women generally had full legal rights to participate in the political process; however, in accordance with societal practice, widows in mourning (for periods that can vary from 6 months to 3 years) are prevented from appearing in certain public places and from being near the King and, as a result, can be excluded from voting or running for office. There were 13 women in the 65-member House of Assembly, 10 women in the 30-seat Senate, and 3 female ministers in the Cabinet. A woman served as Secretary to the Cabinet and the head of the civil service. Three women served as principal secretaries, the most senior civil service rank in the ministries.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views. Human rights groups have spoken out on a number of occasions, criticizing the lack of accountability and transparency in government circles. In April, the U.N. Human Rights Commission Special Rapporteur on Judicial Independence stated that the country needs "a separation of powers between its executive and judicial branches in order to function as a fully democratic nation."

#### Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The labor law forbids employers to discriminate on the basis of race, sex, or political affiliation. Under the labor law, employees may bring suit against employers for discrimination, and there also were provisions for criminal prosecutions. The labor law reportedly has been used on occasion to bring moral suasion to bear against employers. Mixed race citizens sometimes experienced governmental and societal discrimination. The Government prohibits persons who are HIV positive from joining the military, and testing of military applicants is mandatory. Testing in other sectors of society is voluntary. There is a social stigma associated with being HIV positive, and this apparently discouraged persons from seeking to be tested.

#### Women

Domestic violence against women, particularly wife beating, was common, despite traditional restrictions against this practice. Women have the right to charge their husbands with assault under both the Western and the traditional legal systems, and urban women frequently did so, usually in extreme cases when intervention by extended family members failed to end such violence. Rural women often had no relief if family intervention did not succeed, because the traditional courts could be unsympathetic to "unruly" or "disobedient" women and were less likely than the modern courts to convict men for wife beating.

Rape also was common and regarded by many men as a minor offense, while women often were inhibited from reporting such crimes by a sense of shame and helplessness, especially when incest was involved. In the modern courts, sentences frequently resulted in several months in jail, a fine, or both. The incidence of rape increased during the year.

Prostitution is illegal; however, police disregarded it. In addition, to combat the HIV/AIDS pandemic government officials proposed the placement of condoms where prostitutes were known to congregate.

The law provides some protection from sexual harassment, but its provisions were vague and largely ineffective. Several NGOs provided support for victims of abuse or discrimination. Despite the law's requirement for equal pay for equal work, men's average wage rates by skill category usually exceeded those of women.

Women occupied a subordinate role in society. In both civil and traditional marriages, wives were legally treated as minors, although those who married under civil law may be accorded the legal status of adults, if stipulated in a signed prenuptial agreement. A woman generally required her husband's permission to borrow money, open a bank account, obtain a passport, leave the country, gain access to land, and, in some cases, take a job.

The dualistic nature of the legal system complicated the issue of women's rights. Since unwritten law and custom govern traditional marriage, women's rights often were unclear and changed according to where and by whom they were interpreted. Couples often married in both civil and traditional ceremonies, creating problems in determining which set of rules applied to the marriage and to subsequent questions of child custody and inheritance in the event of divorce or death. In traditional marriages, a man may take more than one wife. For example, in October 2002, King Mswati III allegedly instructed his agents to take three additional young women into royal custody while he considered whether or not to take them as wives. During 2002 and this year, the King took two of the three women to be his tenth and eleventh wives. The mother of one of the women sued in court alleging that her daughter's taking by royal emissaries was a kidnapping but postponed the suit in 2002, and took no further action during the year. The third woman was reportedly living with the Queen Mother, but had not been taken as a wife.

A man who marries a woman under civil law legally may not have more than one wife, although in practice this restriction sometimes was ignored. Traditional marriages considered children to belong to the father and to his family if the couple divorced. Children born out of wedlock were viewed as belonging to the mother. Under the law, a woman did not pass citizenship automatically to her children. Inheritances were passed through male children only.

Changing socioeconomic conditions, urbanization, and the increasing prominence of female leaders in government and civic organizations were breaking down barriers to equality. Women routinely executed contracts and entered into a variety of transactions in their own names. The Government committed itself to various women's initiatives, and the Ministry of Home Affairs coordinated women's issues. Although gender sensitization was not part of the formal school curriculum, some schools organized debates and other mechanisms to address gender issues. The University Senate also has a subcommittee that encouraged students and faculty to hold seminars and workshops on gender issues.

#### Children

The Government passed a number of laws that directly addressed children's issues. The Government did not provide free, compulsory education for children; the Government paid teachers' salaries while the student paid fees for books and contributed to the building fund. Supplemental money sometimes must be raised for building upkeep, including teachers' housing. The country had a 70 percent primary school enrollment rate. Children were required to start attending school at the age of 6 years. Most students reach grade 7, which was the last year in primary school, and a large percentage of students finish grade 10. The public school system ends at grade 12. A government task force continued to educate the public on children's issues.

In general medical care for children was inadequate. The wait for medical care was long, nursing care in public hospitals was poor, and hospitals were overcrowded and understaffed. Most prescription drugs were available in urban facilities, but rural clinics had inadequate supplies of certain drugs.

Child abuse was a serious problem, and the Government did not make specific efforts to end such abuse. The incidence of child abuse and rape increased during the year. Of 680 reported cases of rape, one third of the victims were younger than age 10. Children convicted of crimes sometimes were caned as punishment. There were a growing number of street children in Mbabane and Manzini. The law prohibits prostitution and child pornography and provides protection to children less than 16 years of age from sexual exploitation and sets the age of sexual consent at 16 years of age; however, female children sometimes suffered sexual abuse, including by family members. There were reports that Mozambican and Swazi girls worked as prostitutes in the country. There were allegations and a news report that children, including street children, were increasingly vulnerable to sexual exploitation.

#### Persons with Disabilities

There were no laws that protect the rights of those with disabilities or that mandate accessibility for persons with disabilities to buildings, transportation, or government services; however, all new government buildings under construction included improvements for those with disabilities, including accessibility ramps.

#### National/Racial/Ethnic Minorities

Governmental and societal discrimination was practiced widely against nonethnic Swazis, namely white persons and persons of mixed race. Although there were no official statistics, an estimated two percent of the population were nonethnic Swazis. Nonethnic Swazis have experienced difficulty in obtaining official documents, including passports (see Section 2.d.). Nonethnic Swazis also suffered from minor forms of governmental and societal discrimination such as needing special permits or stamps to buy a car or house, delays in receiving building permits for houses, and difficulties in applying for a bank loan.

#### Section 6 Worker Rights

##### a. The Right of Association

The IRA provides for the right to form associations, including trade unions, and workers exercised this right in practice. However, the Government continued to harass labor unions. For example, in January, the Government harassed members of the Swaziland National Association of Teachers (SNAT) by hiring approximately 3,000 teachers but refusing to pay them for 3

months. SNAT executives charged that the Government's actions weakened the organization because they could not collect dues from the teachers during the 3-month period. During the year, the Government continued to ignore certain foreign direct investors who violated international labor standards and domestic labor laws with impunity leading to a Generalized System of Preferences investigation of the country's alleged violations of international workers' rights.

The main trade union federation was the SFTU. A second trade union federation was the SFL.

Unions were free to draw up their own constitutions within the framework of the IRA, which specifies a number of provisions that must be addressed, including the election of officers by secret ballot. There was no collusion between the Government and business in relation to worker rights. The Labor Commissioner may register unions quickly, once they have met all the legal requirements of the IRA.

The law requires employers to recognize a union when it achieves more than 50 percent membership among employees. Employers must allow representatives of legally recognized unions to conduct union activities on company time. Although many employers resisted union recognition and forced the issue to the Industrial Court, the Court generally ruled in favor of the unions in these cases. In August, business and labor representatives in the garment sector entered into an agreement clarifying the procedures governing union recognition. The agreement clarifies how employers and unions will conduct verifications and what proof of membership unions must show during a verification.

The law forbids anti-union discrimination; however, anti-union discrimination continued to be prevalent, and manufacturers continued to refuse to recognize duly elected unions. In the case of unfair dismissal, the court can order reinstatement and compensation for the employee, as well as fine the employer. Union leaders made credible charges that management in various industries dismissed workers for union activity. The allegations of union discrimination were most common in the garment sector.

Unions were free to associate with international labor bodies and maintained regular contact. The International Labor Organization is active in the country.

#### b. The Right to Organize and Bargain Collectively

The law provides for the right to organize and bargain collectively, and collective bargaining was widespread. The IRA provides for the collective negotiation of the terms and conditions for employment and dispute resolution mechanisms. In addition, the law also provides for the administration of a court devoted to the adjudication of labor related issues and establishes a tripartite labor advisory board. Approximately 80 percent of the formal private sector was unionized, and several collective bargaining agreements were reached during the year. For example, collective bargaining agreements were reached between the SFL and banks. The Industrial Court may refuse to register collective bargaining agreements in the event of nonobservance of any requirement of the IRA. The IRA permits workers councils, which may be established in factories with 25 or more employees in the absence of a trade union, to negotiate terms and conditions of work, wages, and welfare. These workers councils were established in practice.

Disputes were referred to the Labor Commissioner and the Industrial Court, if necessary. The IRA also provides for disputes to be referred to the Conciliation, Mediation, and Arbitration Committee, chaired by the Chief Executive Officer.

The IRA provides that employees, who are not engaged in essential services, have the right to participate in peaceful protest action to promote their socioeconomic interests and details the steps to be followed when disputes arise, including the definition of a legal or illegal strike. There also were penalties for employers who conduct unauthorized lockouts; however, penalties were not imposed during the year. The IRA shortened the notice that an organization or federation was required to give before it commenced a protest action. The IRA empowers the Government to mediate employment disputes and grievances through the Labor Advisory Board. When disputes arose, the Government often intervened to reduce the chances of a strike, which may not be called legally until all avenues of negotiation have been exhausted, and a secret ballot of union members has been conducted. The IRA prohibits strikes in "essential" services, which included police and security forces, correctional services, fire fighting, health, and many civil service positions. There were no reports of any lockouts during the year.

In previous years, there were a number of legal strikes, usually over wages and benefits, the dismissal of fellow workers, or socioeconomic issues. In addition, during the year, members of the SFTU and SFL carried out legal strikes in January, February, and August.

The Government had not paid back wages to 32 state television employees who were dismissed in 1999 by year's end.

During the year, the Government maintained that all outstanding labor issues have been addressed; however, the SFTU continued to press for action on 27 demands, including recognition of affirmative action, a national uniform minimum wage, an end to discrimination against women, the provision of better housing for workers, inclusion of worker representatives in constitutional discussions, and the lifting of the 1973 Decree that suspended the Constitution and outlawed political parties. The country did not participate in the 2003 ILO Annual Conference.



There were widespread allegations that some garment manufacturers did not comply with the labor laws and that the Government did not enforce the law effectively within this sector. It was reported that the AG did not bring any cases against garment manufacturers for labor law violations, despite government inspectors having identified several manufacturers that were in violation of the law. As a result of the August business and labor agreement in the garment sector clarifying the procedures governing union recognition, relations improved somewhat (see Section 6.a.).

There are no export processing zones.

#### c. Prohibition of Forced or Bonded Labor

The law prohibits forced or bonded labor, including by children, and the Government generally enforced this prohibition effectively; however, the SFTU cited the 1998 Administrative Order as a form of forced labor, because it reinforced the tradition of residents doing traditional tasks for chiefs without receiving compensation and allowed the chiefs to fine their subjects for failing to carry out the manual labor, which occurred in practice.

#### d. Status of Child Labor Practices and Minimum Age for Employment

Child labor was a problem. The law prohibits the hiring of a child below the age of 15 in an industrial undertaking, except in cases where only family members were employed in the firm, or in technical schools where children were working under the supervision of a teacher or other authorized person. Legislation limits the number of night hours that can be worked on schooldays, and limits children's work hours overall to 6 per day and 33 per week. Employment of children in the formal sector was not common; however, children below the minimum age frequently were employed in the agricultural sector, particularly in the eastern cotton-growing region. Children also were employed as domestic workers, and as herd boys in rural areas. The Ministry of Labor was responsible for enforcement, but its effectiveness was limited by personnel shortages.

The Government had not decided to participate in the ILO's International Program for the Elimination of Child Labor program by year's end; however, the Government did decide to participate in a foreign government-sponsored education program aimed at eliminating child labor.

#### e. Acceptable Conditions of Work

There was a legally mandated sliding scale of minimum wages depending on the type of work performed. The minimum monthly wage for a domestic worker was approximately \$44 (300 emalangeni), for an unskilled worker \$61 (420 emalangeni), and for a skilled worker \$88 (600 emalangeni). These minimum wages generally did not provide a worker and family with a decent standard of living.

Labor, management, and government representatives have negotiated a maximum 48-hour workweek in the industrial sector except for security guards, who worked up to six 12-hour shifts per week. The law permits all workers 1 day of rest per week. Most workers received a minimum of 12 days annual leave. The Labor Commissioner enforced standards in the formal sector; however, enforcement was lax or nonexistent especially in the garment sector.

The law protects worker health and safety. The Government set safety standards for industrial operations, and it encouraged private companies to develop accident prevention programs. Growth in industrial production necessitated more government action on safety issues; however, the Labor Commissioner's office conducted few safety inspections because of staffing deficiencies and an alleged desire not to "scare off foreign investors." Workers had no formal statutory rights to remove themselves from dangerous work places without jeopardizing their continued employment; nor did any collective bargaining agreements address the matter. There were extensive provisions allowing workers to seek redress for alleged wrongful dismissal; these provisions frequently were invoked.

There were allegations that working conditions within some garment factories were substandard. In particular, there were allegations that women who tried to take maternity leave were dismissed, that employers paid employees at casual or probationary wage scales regardless of their position or length of service, and that some supervisors were abusive to employees.

#### f. Trafficking in Persons

The law does not prohibit trafficking in persons, and there were reports of trafficking. Underaged Mozambican and Swazi girls reportedly worked as prostitutes in the country (see Section 5). There also were reports that Swazi women were trafficked to South Africa for prostitution.